

Exhibit 01

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

GOLO, LLC,)
)
Plaintiff,)
) C.A. No. 20-667-CFC
v.)
)
GOLI NUTRITION INC., a) Trial Volume I
Canadian Corporation, GOLI)
NUTRITION, INC., a Delaware)
Corporation, and MICHAEL)
BITENSKY,)
)
Defendants.)
- - - - -
GOLI NUTRITION INC., a Canadian)
Corporation, GOLI NUTRITION)
INC., a Delaware Corporation)
and MICHAEL BITENSKY,)
)
Counter-Plaintiffs,)
)
V.)
)
GOLO, LLC and CHRISTOPHER)
LUNDIN,)
)
Counter-Defendants.)

J. Caleb Boggs Courthouse
844 North King Street
Wilmington, Delaware

Tuesday, August 22, 2023
8:26 a.m.
Jury Trial

BEFORE: THE HONORABLE COLM F. CONNOLLY, U.S.D.C.J.

1 APPEARANCES:

2 BARNES & THORNBURG, LLP
3 BY: CHAD STOVER, ESQUIRE

4 -and-

5 SIDLEY AUSTIN LLP
6 BY: MARK HOPSON, ESQUIRE
7 BY: AMY LALLY, ESQUIRE
8 BY: BENJAMIN MUNDEL, ESQUIRE
9 BY: JACQUELINE FRADETTE, ESQUIRE

10 For the Plaintiff and
11 Counter-Defendants

12 DLA PIPER
13 BY: STEPHANIE O'BYRNE, ESQUIRE

14 -and-

15 DLA PIPER
16 BY: MELISSA R. REINCKENS, ESQUIRE
17 BY: TAMAR Y. DUVDEVANI, ESQUIRE
18 BY: SAFRAZ W. ISHMAEL, ESQUIRE
19 BY: SUSAN N. ACQUISTA, ESQUIRE
20 BY: COLIN STEELE, ESQUIRE

21 For the Defendants and
22 Counter-Plaintiffs

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Butler - Direct

04:40:43 1 A. So, I surveyed U.S. residents who were 18 years or
04:40:46 2 older, who have or are likely to purchase a vitamin or
04:40:50 3 nutritional supplement. And they're sampled from all over
04:40:56 4 the United States, and we collected data from 406 consumers.

04:41:01 5 Q. And how did you go about identifying the 406 people
04:41:05 6 that were in your sample from that broader population?

04:41:08 7 A. Yeah. So -- so, when I started doing this kind of
04:41:11 8 work, we used to do these surveys in shopping malls, but
04:41:14 9 that's not how we do them anymore. What we typically use
04:41:18 10 are what are called Internet panels.

04:41:21 11 So, these are consumers -- millions of Americans
04:41:24 12 who have agreed to sign up and participate in the market
04:41:28 13 research or survey research. And we go into those panels
04:41:33 14 with millions and millions of people, and we randomly select
04:41:36 15 individuals to participate. And then to make sure that
04:41:39 16 people are qualified, we ask a series of screening
04:41:42 17 questions, right.

04:41:42 18 So, we start basically with a random sample of
04:41:45 19 the U.S. population and then find the people who are
04:41:48 20 specifically qualified to participate.

04:41:50 21 Q. And are you sure, Ms. Butler, that you can take the
04:41:54 22 results from the 406 randomly selected people and apply that
04:41:58 23 to the broader population of customers that are likely or
04:42:02 24 have purchased a vitamin or nutritional supplement?

04:42:05 25 A. Yes. So, a good rule of thumb is you can think that

Butler - Direct

04:42:08 1 a sample size of 100 has about a plus or minus of 10
04:42:12 2 percent. For 400, that's about 3 percent. And then that
04:42:18 3 number continues to go down.

04:42:20 4 So, as the sample size gets bigger, you don't
04:42:23 5 continue to get gains like that. So, 400 is a good number.
04:42:27 6 It also allows me to collect data from men and women, all
04:42:31 7 different age groups, all across the United States.

04:42:34 8 Q. And were you able to identify men and women and
04:42:37 9 people in all different age groups across the United States
04:42:39 10 in your sample?

04:42:40 11 A. Yes.

04:42:41 12 Q. All right. Let's talk about how the survey actually
04:42:44 13 worked.

04:42:45 14 MR. MUNDEL: And we can go to the next
04:42:46 15 demonstrative.

04:42:46 16 BY MR. MUNDEL:

04:42:47 17 Q. And, Ms. Butler, can you just explain the steps of
04:42:50 18 the survey that you used in this case?

04:42:52 19 A. Yes. So, I mean, we talked about getting the right
04:42:56 20 group of people and kind of a random selection of people.

04:42:59 21 The other thing that's really important in a
04:43:01 22 survey like this is to make sure that what we're having
04:43:05 23 people -- the exercise that we're having people undergo in
04:43:08 24 the survey looks like the real world, right, because we want
04:43:12 25 to be able to take our survey results and say something

Butler - Direct

04:43:15 1 about the real world. If there's not a connection, right,
04:43:18 2 if what we have -- the exercise doesn't really look like the
04:43:22 3 real world, then the results aren't going to be meaningful.

04:43:26 4 So, in this case, and I think we've heard about
04:43:29 5 television advertising and Instagram advertising, we showed
04:43:33 6 respondents a GOLO television commercial and then we showed
04:43:36 7 them what's called a distractor. And that's because, of
04:43:40 8 course, you might be watching TV and, I don't know, the
04:43:44 9 doorbell rings, or the dog barks, or the kids yell your
04:43:48 10 name. There's some distraction. And then we showed
04:43:51 11 respondents a series of Instagram ads, including an ad from
04:43:55 12 goli and some other ads, and then asked them confusion
04:43:59 13 questions.

04:43:59 14 Q. To what extent is having respondents look at a
04:44:03 15 television commercial and then a social media advertisement
04:44:07 16 consistent with the way Americans consume media?

04:44:11 17 A. Sure. I mean, I think we probably all know that lots
04:44:14 18 of us now sit and watch television and look through our
04:44:17 19 phones, or have our phones right by our side. As well, we
04:44:21 20 made sure that respondents in the survey indicated that they
04:44:25 21 both watched television and look at social media. And we
04:44:29 22 didn't have any problems finding consumers who do both of
04:44:33 23 those things.

04:44:35 24 Q. All right. Now, let's run through each of those
04:44:37 25 steps in a bit more detail. And we'll start with

Butler - Direct

05:02:31 1 standing.

05:02:31 2 THE COURT: Oh, okay. That's good.

05:02:33 3 All right. I'll see you tomorrow morning.

05:02:35 4 And, again, around 8:15 just because -- just in
05:02:38 5 case an issue pops up.

05:02:40 6 Thank you very much.

05:02:41 7 DEPUTY CLERK: All rise.

05:03:58 8 (Court was recessed at 5:03 p.m.)

9 I hereby certify the foregoing is a true and
10 accurate transcript from my stenographic notes in the
11 proceeding.

12 /s/ Heather M. Triozzi
13 Certified Merit and Real-Time Reporter
14 U.S. District Court
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